

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALVIN HEGGE, *et al.*,

Plaintiffs,

v.

JAY INSLEE, *et al.*,

Defendants.

Case No. C20-6170-BJR-MLP

ORDER TO SHOW CAUSE

This is a civil rights action filed by nineteen *pro se* prisoners, all of who were apparently housed at the Stafford Creek Corrections Center (“SCCC”) in Aberdeen, Washington at the time the complaint was prepared. The complaint was originally filed in the United States District Court for the Eastern District of Washington but was subsequently transferred to this District after it was determined that all the Plaintiffs were housed in this District and all of the claims apparently arose in this District. (*See* Dkt. # 4.)

Plaintiffs allege in their complaint that due to the removal of the dishwasher at SCCC, and implementation of a new three-tank dish cleaning process, eating utensils (trays, sporks, and cups) do not get properly cleaned and Plaintiffs have been forced to ingest a harmful pesticide sanitizer which is part of the new cleaning process. (Dkt. # 13 at 16-18, 26.) Plaintiffs claim that the sanitizer has resulted in health issues for some of them, including vomiting and diarrhea, and that

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1 the new cleaning process also spreads harmful bacteria and viruses, including COVID-19. (*See id.*)
2 Plaintiffs also allege that some of the named Defendants have been deliberately indifferent to their
3 safety in relation to COVID-19 by failing to comply with facial covering and social distancing
4 mandates. (*Id.* at 20, 27.)

5 Plaintiffs allege that they have been subjected to retaliation for attempting to challenge the
6 new cleaning process, and that Defendants destroyed portions of Plaintiffs' legal records and files
7 and prevented them from working together to litigate legal actions against prison officials relating
8 to the new cleaning process. (*Id.* at 18-19.) Plaintiffs claim that State of Washington and
9 Washington Department of Corrections ("DOC") officials have engaged in a conspiracy to obstruct
10 justice and deprive them of their constitutional rights, apparently in relation to Plaintiffs' attempts
11 to challenge the new cleaning process. (*Id.* at 21.) Relatedly, Plaintiffs claim that Magistrate Judge
12 J. Richard Creatura and Deputy Clerk Tyler Campbell, having knowledge of the wrongs
13 committed by other named Defendants, failed to prevent those wrongs by "cancelling and
14 returning a check from Alvin Hegge to pay for his share of the filings [sic] fee."¹ (*Id.*)

15 Finally, Plaintiffs allege that three attorneys who provide contract services to the DOC
16 failed to provide legal assistance and prevented prisoners from providing legal assistance to each
17 other, resulting in the continued false imprisonment of Mr. Hegge and Plaintiffs Jeffrey Ziegler and
18 Brian Garvie (the Court presumes this is a reference to named Plaintiff Eugene B. Garvie). (*Id.* at
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20 ¹ This claim relates to a payment Mr. Hegge made in another case currently pending in this Court,
21 *Mickens v. Inslee, et al.*, C20-5259-RJB-JRC. (*See* Dkt. # 13-4 at 42-43.) The complaint filed in *Mickens*
22 identified over 30 Plaintiffs and raised claims substantially similar to those asserted in this action. *See*
23 C20-5259-RJB-JRC, Dkt. # 1-1. The Court ultimately determined that that case should proceed as to only
the first named Plaintiff, Rory Mickens. *Id.*, Dkt. ## 59, 65. The remaining Plaintiffs, including Mr.
Hegge, were dismissed without prejudice to those individuals instituting new, separate lawsuits. *Id.*
Rather than file separate lawsuits, fifteen of the Plaintiffs dismissed from the *Mickens* case joined with
four other prisoner Plaintiffs to file this action.

20-21, 27.) Plaintiffs identify forty-nine Defendants in their complaint and they request damages.
(*Id.* at 1, 30.)

At present, there are a number of outstanding deficiencies relating to filing fee requirements and there are also significant deficiencies in the existing pleading. However, prior to addressing such deficiencies, the Court must first address whether this action should proceed as a single action or as several separate actions given the practical difficulties of litigating a case involving multiple *pro se* prisoner Plaintiffs.

As an initial matter, the Court notes that Plaintiffs seek to certify this action as a class action under Fed. R. Civ. P. 23(c), and the complaint identifies Mr. Hegge as the “Representative” under Fed. R. Civ. P. 23(a). (Dkt. # 13 at 1.) Mr. Hegge, however, is proceeding *pro se* as are all of the other purported Plaintiffs. The Ninth Circuit has made clear that a *pro se* litigant has no authority to appear as an attorney for others. *See C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) (*citing Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962)); *McShane v. United States*, 366 F.2d 286, 288 (9th Cir. 1966). Because Mr. Hegge does not have authority to appear on behalf of any other litigants, this action is not maintainable as a class action.

The Court must therefore determine whether joinder of all nineteen Plaintiffs in a single action is either proper or practical. Rule 20 of the Federal Rule of Civil Procedure permits joinder of plaintiffs in a single action if they assert any right to relief arising out of the same occurrence or series of occurrences and if any question of law or fact common to all plaintiffs will arise in the action.” Fed. R. Civ. P. 20(a)(1). However, Rule 21 of the Federal Rules of Civil Procedure authorizes the Court, on just terms, to sever claims. Fed. R. Civ. P. 21; *Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir.1980) (even if the specific requirements

1 of Rule 20 may be satisfied, a trial court must examine other relevant factors to determine if
2 joinder of a party will comport with principles of fundamental fairness).

3 Though the complaint, in general, is not particularly well pled, there appear to be at least
4 some claims arising out of the same occurrence and which may involve questions of law or fact
5 common to all Plaintiffs. In particular, the claims pertaining to the SCCC's alleged kitchen
6 cleaning process and to the alleged failure of SCCC staff to enforce facial covering and social
7 distancing mandates may meet these criteria. However, there are also claims that appear to
8 implicate a smaller subset of Plaintiffs. In particular, the claims pertaining to the alleged
9 retaliatory actions of Defendants, the seizure of legal documents, and the actions of contract
10 counsel do not clearly involve questions of law or fact common to all Plaintiffs. The Court
11 observes that while all of the claims asserted appear to involve Mr. Hegge in some fashion, the
12 degree of involvement of other Plaintiffs in the various claims is less clear. Assuming that even
13 some of the claims might be properly joined under Rule 20, there are numerous practical
14 difficulties which pose challenges in multi-plaintiff prisoner litigation.

15 Because Plaintiffs cannot represent others' legal interests, they *all* must sign the
16 complaint and any future joint pleadings. *See* Fed. R. Civ. P. 11 ("Every pleading, written
17 motion, and other paper must be signed . . . by a party personally if the party is unrepresented.").
18 This presents a significant logistical burden, which could potentially delay resolution of the case
19 and, indeed, the issue is already evident as one of the named Plaintiff's, Robert Theiry, failed to
20 sign the complaint and is apparently no longer confined at SCCC.² Three additional Plaintiffs –
21 Jacob Clark, Brian Champaco, and Christopher Bowman – are no longer confined at SCCC
22 which will make their continued participation challenging if not impossible. It also seems likely,
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² Mr. Theiry has been notified of this deficiency (dkt. # 8), but he has yet to correct it.

1 if not inevitable, that additional Plaintiffs could be released or transferred out of SCCC before
2 this case could be fully litigated.

3 Moreover, even if all nineteen Plaintiffs were actually able to sign each document, the
4 document would need to be circulated among them for signing, and neither the parties, nor the
5 Court, would be certain whether the pleading had been altered by one of the Plaintiffs prior to
6 filing. The Court is also concerned that there might be a temptation for one Plaintiff to sign a
7 pleading on behalf of another Plaintiff, with or without the other Plaintiff's knowledge, in the
8 interest of expediency or, indeed, in the interest of maintaining an action which would otherwise
9 be wholly unable to proceed if all signatures could not be acquired. Each Plaintiff is responsible
10 for knowing what is filed on his behalf, and all Plaintiffs must agree on all joint filings made in a
11 single action.

12 Another consideration of significance is that though there may be common issues of fact
13 underlying some of the claims, Plaintiffs' individual claims will also involve independent factual
14 allegations which would require separate and distinct evidence, evaluations, and analyses. For
15 example, one Plaintiff's allegation that he suffered from vomiting and stomach issues after eating
16 at the SCCC kitchen will require entirely different evidence than another Plaintiff's claim that he
17 is subject to inadequate cleaning of the SCCC kitchen eating utensils but suffers no symptoms as
18 a result of the alleged lack of sanitation. The same is true for claims pertaining to the failure of
19 staff to enforce mandates regarding facial coverings and social distancing because allegations
20 concerning the type and degree of harm suffered by different Plaintiffs is likely to be based on
21 different evidence. The fact-specific nature of each Plaintiff's claims and analysis of any
22 resulting constitutional injury ultimately could cause delay and confusion in the resolution of this
23 matter.

1 It is worth noting as well that group litigation creates countervailing costs. Each
2 submission to the court must be served on all other co-Plaintiffs in the same action. *See* Fed. R.
3 Civ. P. 5. In this case, that would mean each Plaintiff would be required to pay for postage and
4 copying costs of filing any motion, brief, or other papers on the eighteen other Plaintiffs, which
5 means the cost will be significantly greater than if there were a single Plaintiff.

6 Finally, the Court observes that only two of the named Plaintiffs have filed applications
7 to proceed *in forma pauperis* after being notified of the deficiencies by the Clerk's Office, while
8 Mr. Hegge has actually paid the full filing fee. (*See* Dkt. ## 7, 11, 12; Docket Entry dated
9 1/19/2021.) The fact that Mr. Hegge has paid the filing fee does not relieve the remaining
10 Plaintiffs of their obligation to meet the filing fee requirement. The few courts that have
11 considered the issue agree that prisoner-plaintiffs who proceed together in one action must each
12 pay the full filing fee which means they must, at the very least, qualify to proceed *in forma*
13 *pauperis*. *See, e.g., Boriboune v. Berge*, 391 F.3d 852, 854–56 (7th Cir. 2004); *Hubbard v.*
14 *Haley*, 262 F.3d 1194, 1196–98 (11th Cir. 2001).

15 For the reasons set forth above, it appears that Plaintiffs are not properly joined and that
16 severing Plaintiffs into individual cases will alleviate the obstacles to multi-plaintiff prisoner
17 litigation but still provide Plaintiffs with an avenue to pursue their claims. In instances such as
18 this, the Court can generally dismiss all but the first named Plaintiff without prejudice to the
19 institution of new, separate lawsuits by the dropped Plaintiffs. *Coughlin v. Rogers*, 130 F.3d
20 1348, 1350 (9th Cir. 1997). Plaintiffs will not be disadvantaged if they are not permitted to
21 proceed jointly under Rule 20, and any benefits that Plaintiffs may enjoy in proceeding as co-
22 Plaintiffs is not thwarted by requiring them to proceed in separate actions.

1 For example, separate cases would prevent a deficiency caused by one Plaintiff – such as
2 the lack of signature or transfer to another facility – from adversely impacting the rights of the
3 other Plaintiffs. In addition, any delays in arranging for nineteen prisoners to coordinate and sign
4 their pleadings would be alleviated. Further, any advantage afforded to a *pro se* multi-plaintiff
5 case is not lost by requiring Plaintiffs to proceed in separate actions, Plaintiffs may still
6 coordinate their litigation efforts to the extent their incarceration allows them to communicate
7 and share documents.

8 In addition, the Court could order consolidation of some or even all of the cases, under
9 appropriate circumstances, in order to make discovery, dispositive motions and trial more
10 efficient for the parties and the Court. *See* Fed. R. Civ. P. 42(a) (The Court notes permissive
11 joinder under Rule 20 and consolidation under Rule 42(a) are separate and distinct principles.
12 Under Rule 42(a): “If actions before the court involve a common question of law or fact, the
13 court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate
14 the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” The primary
15 purpose of the rule is to promote trial court efficiency and avoid the danger of inconsistent
16 adjudications); *see also E.E.O.C. v. HBE Corp.*, 135 F.3d 543, 551 (8th Cir. 1998).

17 Based on the foregoing, this Court hereby ORDERS as follows:

18 (1) Plaintiffs are directed to SHOW CAUSE not later than **March 31, 2021**, why all
19 but the first named Plaintiff, Mr. Hegge, should not be dismissed without prejudice to the
20 institution of new, separate lawsuits by the dropped Plaintiffs pursuant to Federal Rule of Civil
21 Procedure 21. In the alternative, Plaintiffs have an opportunity to withdraw from this litigation
22 before the case progresses further. If the Court decides that all but Mr. Hegge should be
23 dismissed, each individual Plaintiff will have the opportunity to litigate his claims in a separate

1 civil action. If any Plaintiff fails to timely respond to this order or files a response indicating that
2 he does not wish to further participate in this action, this will result in a recommendation that the
3 non-responding Plaintiff be dismissed from this action. Each Plaintiff must serve any response
4 that he makes to this order, and anything else he submits to the Court, on the other Plaintiffs.

5 (2) The Clerk is directed to send copies of this Order to each Plaintiff and to the
6 Honorable Barbara J. Rothstein.

7 DATED this 22nd day of February, 2021.

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10 MICHELLE L. PETERSON
11 United States Magistrate Judge
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